

NO. 94026-6

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

LYFT, INC, and RAISER, LLC, a Delaware limited liability company,

Respondents,

vs.

CITY OF SEATTLE and JEFF KIRK,

Appellants.

BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION OF MUNICIPAL
ATTORNEYS

Steven L. Gross, WSBA No. 24658
Port Townsend City Attorney
250 Madison Street, Suite 2
Port Townsend, WA 98368
(360) 379-5048
(360) 385-4290 (fax)
sgross@cityofpt.us

*Counsel for Amicus Curiae Washington
State Association of Municipal Attorneys*

TABLE OF CONTENTS

	Page
Table of Authorities	i
I. INTRODUCTION	1
II. IDENTITY AND INTEREST OF AMICUS CURIAE.....	1
III. STATEMENT OF THE CASE	1
IV. ISSUES PRESENTED	2
V. ARGUMENT.....	2
VI. CONCLUSION.....	4

TABLE OF AUTHORITIES

CASES

<i>Tyler Pipe Indus. v. Dep't of Revenue</i> , 96 Wn.2d 785, 638 P.2d 1213 (1982)	2,3
<i>Belo Mgmt. Servs., Inc. v. Click! Network</i> , 184 Wn. App. 649, 343 P.3d 370 (2014)	4

STATUTES

RCW 42.56.540	1,2,3
Chapter 42.56 RCW	1
RCW 42.56.030	2
RCW 42.56.070(2)	2

RULES

Civil Rule 65	2,3
---------------------	-----

OTHER AUTHORITIES

<u>Public Records Act for Washington Cities, Counties, and Special Purpose Districts</u> , Appendix C, MRSC September 2016	3
--	---

I. INTRODUCTION

Amicus, the Washington State Association of Municipal Attorneys (“WSAMA”), submits this brief to address one issue before the Court: whether the injunction standards in RCW 42.56.540 control over other standards for issuing an injunction. WSAMA believes that the standards in RCW 42.56.540 should always control whenever the court is confronted with a request to enjoin the release of public records regardless of what exemption might apply. Allowing different standards to apply to injunctions based on the nature of the exemption claimed will create uncertainty for both municipalities and for requestors, thereby frustrating Washington public policy.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

WSAMA is a non-profit organization of municipal attorneys throughout the state who represent Washington’s 281 cities and towns. All municipalities are subject to Washington’s Public Records Act, Chapter 42.56 RCW (“PRA”). If the trial court’s decision were upheld, it would create uncertainty for municipalities, requestors, and third parties whose documents or information may be subject to disclosure under the PRA.

III. STATEMENT OF THE CASE

Amicus adopts the Statement of the Case as set forth in the Opening Brief of Appellant the City of Seattle.

IV. ISSUES PRESENTED

Amicus adopts the Statement of the Issues as set forth in the Opening Brief of Appellant the City of Seattle.

V. ARGUMENT

The specific standard for an injunction in RCW 42.56.540 should control over the general standard applied under Civil Rule (“CR”) 65 and *Tyler Pipe Indus. v. Dep’t of Revenue*, 96 Wn.2d 785, 638 P.2d 1213 (1982).

WSAMA agrees with Appellant’s thorough and detailed analysis of this issue on pages 16-20 of its Opening Brief and on pages 6-15 of its Consolidated Reply Brief. It writes separately to expand on the policy reasons for reversing the trial court on this issue.

Since the original passage of the PRA, municipalities have been guided by the principle that disclosure under the PRA is the presumptive result and that exemptions will be construed narrowly. This overarching goal of transparency in government is supported by the Act’s provision that “[i]n the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.” RCW 42.56.030.

There are over one hundred exemption and prohibition statutes that fall under the “other statutes” exemption of RCW 42.56.070(2). Public

Records Act for Washington Cities, Counties, and Special Purpose

Districts, Appendix C, MRSC September 2016¹. For agencies, requestors, and third parties named in public records to have to parse out each specific exemption to determine whether there is a specific injunction standard under that statute is inefficient and could lead to inconsistent rulings from courts, not to mention added delay when production is required.

Consistently using the PRA's standard for all injunctions, regardless of the basis, provides certainty for all parties involved.

Additionally, requiring an agency or third party seeking an injunction to meet the heightened standard for an injunction under RCW 42.56.540 better supports the goals of the PRA for transparency in government. As the City of Seattle points out in its brief at pages 24-25, allowing the lower standard of CR 65/*Tyler Pipe* places the desires of the agency/third party over the public's right of oversight of government agencies.

¹ See also Exemptions from Public Records Disclosure and Confidential Records Prepared by the Code Reviser's Office July 2017, at [http://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/About the Office/Open Government/Sunshine Committee/Materials/Code%20Reviser%20Public%20Disclosure%20Statutes%202017.pdf](http://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/About%20the%20Office/Open%20Government/Sunshine%20Committee/Materials/Code%20Reviser%20Public%20Disclosure%20Statutes%202017.pdf), viewed on 9.20.17 at 15:54.

VI. CONCLUSION

WSAMA asks this Court to adopt the sound reasoning by the Court of Appeals in *Belo Mgmt. Servs., Inc. v. Click! Network*, 184 Wn. App. 649, 343 P.3d 370 (2014), and hold that the heightened standards for an injunction applies to PRA cases, regardless of the nature of the exemption claimed.

Respectfully submitted this 29th day of September, 2017.



Steven L. Gross, WSBA No. 24658
City Attorney, City of Port Townsend
Amicus Curiae on behalf of WSAMA
250 Madison Street, Suite 2
Port Townsend, WA 98368
(360) 379-5048 (360) 385-4290 (fax)
sgross@cityofpt.us

CERTIFICATE OF SERVICE

I certify that on this 29th day of September, 2017, I caused a copy of the Brief of Amicus Curiae Washington State Association of Municipal Attorneys to be served to the following parties in the manner listed below:

Sara O'Connor-Kriss Michael K. Ryan Seattle City Attorney's Office 701 Fifth Avenue, Suite 2050 Seattle, WA 98104-7097 sara.oconnor-kriss@seattle.gov michael.ryan@seattle.gov	By first class U.S. mail and by email
Matthew J. Segal Kymberly K. Evanson Pacifica Law Group LLP 1191 2nd Avenue, Suite 2000 Seattle, WA 98101 matthew.segal@pacificallawgroup.com kymberly.evanson@pacificallawgroup.com	By first class U.S. mail and by email
Jeff Kirk Jeffkirk@gmail.com	By email
Ryan P. McBride Heidi B. Bradley Katie D. Fairchild LANE POWELL PC 1420 Fifth Avenue, Suite 4200 Seattle, WA 98101 mcbrider@lanepowell.com bradleyh@lanepowell.com fairchildk@lanepowell.com	By first class U.S. mail and by email
Judith A. Endejan Garvey Schubert Barer 1191 2nd Ave., 18th Floor Seattle, WA 98101-2939 jendejan@gsblaw.com	By first class U.S. mail and by email

Danny David Baker Botts L.L.P. One Shell Plaza 910 Louisiana Street Houston, TX 77002-4995 danny.david@bakerbotts.com	By first class U.S. mail and by email
--	--

Declared under penalty of perjury under the laws of the State of
Washington at Port Townsend, Washington, on this 29th day of
September, 2017.


Amber Long, Legal Assistant

CITY OF PORT TOWNSEND

September 29, 2017 - 11:16 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 94026-6
Appellate Court Case Title: Lyft, Inc., et al. v. City of Seattle, et al.
Superior Court Case Number: 16-2-03536-1

The following documents have been uploaded:

- 940266_Briefs_20170929111211SC619510_8882.pdf
This File Contains:
Briefs - Amicus Curiae
The Original File Name was 94026-6 WSAMA Brief of Amicus Curiae.pdf
- 940266_Motion_20170929111211SC619510_0154.pdf
This File Contains:
Motion 1 - Amicus Curiae Brief
The Original File Name was 94026-6 WSAMA Motion for Leave to File Brief.pdf

A copy of the uploaded files will be sent to:

- FairchildK@lanepowell.com
- aaron.streett@bakerbotts.com
- bradleyh@lanepowell.com
- danny.david@bakerbotts.com
- dawn.taylor@pacificallawgroup.com
- jeffkirk@gmail.com
- jendejan@gsblaw.com
- kymberly.evanson@pacificallawgroup.com
- lboston@gsblaw.com
- lise.kim@seattle.gov
- matthew.segal@pacificallawgroup.com
- mcbrider@lanepowell.com
- michael.ryan@seattle.gov
- mkorngold@gsblaw.com
- sara.oconnor-kriss@seattle.gov
- sydney.henderson@pacificallawgroup.com

Comments:

Sender Name: Amber Long - Email: along@cityofpt.us

Filing on Behalf of: Steven L. Gross - Email: sgross@cityofpt.us (Alternate Email:)

Address:
250 Madison Street
Suite 2
Port Townsend, WA, 98368
Phone: (360) 385-5991

Note: The Filing Id is 20170929111211SC619510